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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/646,748	12/11/2000	Julio Boza	112701 036	7778

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EXAMINER
MOHAMED, ABDEL A

ART UNIT	PAPER NUMBER
1653	12

DATE MAILED: 02/19/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action	Application No.	Applicant(s)	
	09/646,748	BOZA, JULIO	
	Examiner	Art Unit	
	Abdel A. Mohamed	1653	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 13 January 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.

b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.

2. ☐ The proposed amendment(s) will not be entered because:

   (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);

   (b) ☐ they raise the issue of new matter (see Note below);

   (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

   (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: _____.

3. ☒ Applicant's reply has overcome the following rejection(s): *See Continuation Sheet*.

4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

5. ☒ The a)☐ affidavit, b)☐ exhibit, or c)☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: *See Continuation Sheet*.

6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.

7. ☒ For purposes of Appeal, the proposed amendment(s) a)☐ will not be entered or b)☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

   The status of the claim(s) is (or will be) as follows:

   Claim(s) allowed: _____.

   Claim(s) objected to: _____.

   Claim(s) rejected: *1-16*.

   Claim(s) withdrawn from consideration: _____.

8. ☐ The proposed drawing correction filed on _____ is a)☐ approved or b)☐ disapproved by the Examiner.

9. ☐ Note the attached Information Disclosure Statement(s)(PTO-1449) Paper No(s). _____.

10. ☐ Other: *Note the attached interviw Summary, Paper No. 11.*

Continuation of 3. Applicant's reply has overcome the following rejection(s): The objection to the Trademarks; the rejections under 35 U.S.C. 112, second paragraph and 35 U.S.C. 102(b) over WO 98/54985.

Continuation of 5. does NOT place the application in condition for allowance because: The rejection under 35 U.S.C 102(b) over Ballevre et al., (U.S. Patent No. 5,849,335) is maintained. Applicant's arguments that the Ballevre reference relates to the use of a carob protein to provide a source of glutamine and the reference only optionally discloses that other types of protein in addition to carob protein, such as casein, whey or free amino acids, can be used. However, nowhere does this reference disclose or arguably suggest that the use of these other types of proteins can be effectively used as a source of glutamine for increasing plasma glutamine concentration in a stressed animal, for increasing muscle glutamine concentration in a mammal and/or for providing glutamine to a mammal suffering from injured , diseased or underdeveloped intestines as required by the claimed invention is unpersuasive. Contrary to Applicant's arguments, the prior art clearly states on col. 3, lines 11-15 that the protein source may include other types of protein in addition to carob protein; for example, casein, whey, soy, rice and oat bran protein, or mixtures thereof. The protein may be intact form or hydrloyzed form. Further, the protein source may include free amino acids. On col. 4, lines 30-32, the reference states that the protein source preferably includes whey, casein, or mixtures of whey and casein; for example in an amount of about 10% to about 30% by weight. Furthermore, On col. 3, lines 3-30, the reference discloses a nutritional composition comprising a protein source including whey protein and a protein mixture having the amino acid profile of whey protein which is administered to stressed patients to increase the plasma glutamine concentration, or administered as nutritional support for increasing muscle glutamine concentration in athletes after exercise, or administered to patients suffering from injured or diseased intestines or to maintain the physiological functions of the intestines particularly in under-developed intestines. Moreover, independnet claims 1-3 are directed to methods comprising the steps of adminsitering.....a nutritional composition including a protein source chosen from the group consisting of whey protein, and a protein mixture which stimulates the amino acid profile of whey protein, but, the claims are still open, in view of the comprising which would not exclude the carob protein. Thus, the reference clearly discloses the administartion of nutritional composition which contains whey protein (or a protein mixture which stimulates its acid profile) as a protein source for the same purposes (i.e., for increasing glutamine levels in plasma or muscle of a stressed patient, pre-term baby or athletes). Therefore, as the whey protein hydrolysate comprises glutamine and it is used for nutritional purposes; it increases plasma glutamine concentration in mammals, increases muscle glutamine concentation in mammals, and provides treatment to patients suffering from injured, dieseased or underdeveloped intestines. Thus, for above reasons and for the reasons of record, the prior art anticipates claims 1-16 as drafted.

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